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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 MICHAEL FRANCIS MOYNIHAN,
11 JR.,

12 Plaintiff,

13 v.

14 MARK ROE,

15 Defendant.
16

Case No. C11-1785-MJP

REPORT AND RECOMMENDATION

17 Plaintiff is proceeding *pro se* in this proposed civil action. On October 25, 2011, when
18 plaintiff filed his application to proceed *in forma pauperis* (“IFP”) along with his proposed
19 complaint, plaintiff was incarcerated at the Snohomish County Jail in Everett, Washington.
20 Dkt. 1 at 2, 4-5. On November 2, 2011, the Court issued an Order to Show Cause “den[ying]
21 plaintiff’s application to proceed IFP based on the three-strikes rule of 28 U.S.C. § 1915(g),
22 and direct[ing] plaintiff to pay the \$350.00 filing fee in order to proceed with his complaint.”
23 Dkt. 3 at 1. Specifically, the Court noted that plaintiff has, on three or more prior occasions,
24 brought civil actions as a prisoner that were dismissed on the grounds that they were frivolous,
25 malicious, or failed to state a claim upon which relief may be granted. *Id.* at 1-2 (citing 28
26 U.S.C. § 1915(g)). Moreover, nothing in the current IFP application or proposed complaint

1 suggested that plaintiff was under imminent danger or serious physical injury. *See id.* at 2. As
2 a result, plaintiff was directed to pay the filing fee within thirty days, or alternatively, show
3 cause why this case should not be dismissed in light of plaintiff's three strikes.

4 On November 3, 2011, plaintiff sent a letter to the Court asking that all of his pending
5 cases be stayed due to his limited access to sufficient legal materials. Dkt. 4 at 1. This letter
6 presumably referred to his difficulty accessing legal materials as a result of his incarceration.
7 At the top of his letter, plaintiff also provided a new mailing address in North Bend,
8 Washington, although the return address on his envelope was the jail address in Everett. *See*
9 *id.*

10 On November 7, 2011, the Court's Order to Show Cause, which was mailed to the
11 Snohomish County Jail, was returned as undeliverable. Dkt. 5. On November 10, 2011, the
12 Court re-mailed the Order to plaintiff's North Bend address, since it appeared possible that
13 plaintiff had recently moved to that address after being released from prison. This time,
14 plaintiff's mail was not returned.

15 Because over sixty days have elapsed since the Order to Show Cause was delivered to
16 plaintiff's North Bend address, and plaintiff has not yet paid the requisite filing fee or
17 responded to this Court's Order by showing why this case should not be dismissed, this action
18 is DISMISSED without prejudice for failure to prosecute pursuant to Local Rule CR 41(b)(2).¹
19 A proposed order accompanies this Report and Recommendation.

20 DATED this 13th day of January, 2012.

21 
22 JAMES P. DONOHUE
23 United States Magistrate Judge

24 _____
25 ¹ The Court notes that if plaintiff has indeed been released from prison, as appears to be
26 the case, his concerns expressed in his November 7, 2011 letter regarding his limited access to
legal materials while incarcerated at the Snohomish County Jail are no longer applicable.